



The Supreme Court of Kansas

Douglas T. Shima
Clerk of the Appellate Courts

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**House Committee on Judiciary
Representative Fred Patton, Chairman
Neutral Testimony on House Bill 2020
Nominating Commissions
WRITTEN ONLY**

**Douglas T. Shima
Clerk of the Appellate Courts
January 28, 2019**

Mr. Chairman, members of the Committee, thank you for the opportunity to provide written neutral testimony concerning House Bill 2020, which would remove the 2016 amendments regulating the lawyer member elections of the Supreme Court Nominating Commission and the Judicial District Nominating Commissions. The 2016 amendments caused a significant increase in workload which necessitated hiring additional staff to comply with the certified roster requirements of K.S.A. 20-170. Voter forms have been revised, computer data bases have been modified, and procedures have been revised. Compliance thus far with these requirements has cost approximately \$30,000 in printing, postage, and additional staffing.

Passage of HB 2020 would eliminate additional costs of distributing selection forms, compiling certified rosters, verifying attorney selection during annual attorney registration, as well as administering and canvassing these elections. It would also shorten the amount of time needed to canvass each election, as we would be able to utilize more people, rather than only the three designated canvassers: Clerk of the Appellate Court, Secretary of State (or designee), and the Attorney General (or designee).

Information disclosed prior to passage of the 2016 legislation included verification that the person was a Kansas attorney to include: 1) Name; 2) Bar Registration Number; 3) Date of Kansas Admission; 4) Business Mailing Address; 5) Business Phone; 6) Business Fax; and 7) Current Status of License to Practice Law. This is the only information publically available on the Judicial Branch website. This same information is also provided for informal requests made to the Clerk's Office. Email addresses are provided upon submission of a formal Kansas Open Records Act (KORA) request if an email address is available in the attorney registration database.

The 2016 amendments now require the following information be disclosed: 1) Name; 2) Residential address; 3) Date of Birth; 4) Unique voter identification number; 5) Dates of licensure to practice law in Kansas; 6) Voter gender; and 7) last 4 digits of Social Security number or full driver's license or non-drivers' license number. This information is gathered at the Appellate Clerk's Office and is provided to the Kansas Secretary of State. It is also subject to disclosure pursuant to the Kansas Open Records Act under K.S.A. 20-170(e) and K.S.A. 20-2917(c).

I have attached a timeline of the election of the lawyer member of the Supreme Court Nominating Commission occurring this spring. A financial impact statement follows that document.

Thank you for allowing me to provide information to this committee.



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**TIMELINE TESTIMONY Presented to the
House Committee on Judiciary
By Douglas T. Shima, Clerk of the Appellate Courts
January 28, 2019
House Bill 2020**

Upcoming lawyer Elections for the Supreme Court and Judicial District Nominating Commissions:

- 2019 -- Election for Lawyer member from 2nd Congressional District
- 2020 -- Election for Lawyer members from 17 Judicial District Nomination Commissions

Mr. Chairman, members of the Committee, thank you for the opportunity to testify concerning House Bill 2020, which would remove the 2016 amendments regulating the lawyer elections of the Supreme Court Nominating Commission and the Judicial District Nominating Commissions. The 2016 amendments have caused a significant increase in workload issues for my staff and the necessity of hiring additional staff in order to comply with the certified roster requirements of K.S.A. 20-170. Following is a timeline of the lawyer elections occurring this spring for the lawyer member of the Supreme Court Nominating Commission for the 2nd Congressional District. I have attached a copy of the letter and form mailed to all Kansas attorneys in 2018 to supply the information necessary for eligibility to be added to the certified roster. Interspersed in the timeline below are the certified roster requirements that would be eliminated if House Bill 2020 is passed:

- I. **February 15, 2019** – Clerk will run list to determine eligible lawyers for placement on certified roster under K.S.A. 20-170.
 - A. K.S.A. 20-122(a) – Clerk shall use the certified roster for ascertaining names and place of residence for those entitled to nominate, be nominated, vote, or serve as a member of the Commission.

B. Clerk shall maintain a roster of attorneys to practice law in Kansas. K.S.A. 20-170. The roster shall have seven components, including 5 taken from the general election voter registration provisions (K.S.A. 25-2309(b)(1)-(5)):

1. Name
2. Place of residence, including specific address or location
3. Date of birth
4. Sex
5. Last four digits of social security number or full driver's license or nondriver's identification card number
6. Congressional district of the attorney
7. Judicial district of the attorney

C. Following is the breakdown of the totals for the certified roster for the upcoming lawyer member elections:

1. Lawyer member election for the Supreme Court Nominating Commission in 2019 (estimates)
 - a. **2,419** active, inactive, and retired attorneys in the 2nd Congressional District.
 - b. **1,383** attorneys eligible to participate in the election as being on the certified roster, K.S.A. 20-122.
2. Lawyer member election for 17 Judicial District Nominating Commissions in 2020 (estimates)
 - a. **7,265** active, inactive, and retired attorneys in 17th Judicial Districts.
 - b. **3,624** attorneys eligible to participate in the election as being on the certified roster, K.S.A. 20-122.
3. Reasons given for not being on the certified roster:
 - a. Privacy Concerns;
 - b. Refuse to give information;
 - c. Security concerns for Judges, District Attorneys, and attorneys;
 - d. Not return forms;
 - e. Cannot control Secretary of State's distribution of private information; and
 - f. Gender discrimination.

- II. **February 20, 2019** – Certified roster due to the Kansas Secretary of State (K.S.A. 20-170(d)(1)-(3)).
- A. Certified roster shall include the five components found in K.S.A. 25-2309(b)(1)-(5), plus residence of congressional district for *non-chair lawyer* elections. (See I(B) above)
 - B. Kansas Secretary of State will append "unique voter identification number" as contained in the centralized voter registration database in K.S.A. 25-2304.
- III. **March 1, 2019** – Nomination letters sent to lawyers on certified roster for election of lawyer member in 2nd Congressional District.
- A. In order to nominate, be nominated, vote, or serve as a member of the commission, attorneys must, according to K.S.A. 20-170(c):
 - 1. Be licensed to practice law in Kansas
 - 2. Reside in Kansas as of February 15, 2019
 - 3. Information with the Roster of Attorneys includes:
 - a. Name
 - b. Place of residence, including specific address or location
 - c. Date of birth
 - d. Sex
 - e. Last four digits of social security or full driver's license or nondriver's identification card number
- IV. **April 1, 2019** – Nominations due in Office of Clerk of the Appellate Courts. K.S.A. 20-120.
- A. Nomination of Lawyer
 - B. Written Consent of Nominee
- V. **May 1, 2019** – Ballots and Certificates of Eligibility mailed out to attorneys on certified roster. K.S.A. 20-120.
- VI. **May 15, 2019** – Ballots and Certificates of Eligibility due in office of Clerk of the Appellate Courts. K.S.A. 20-120.
- A. Certificate of Eligibility must be in a separate envelope and must accompany ballot (K.S.A. 20-122(b)).

- B. Canvassers (K.S.A. 20-130)
 - 1. Clerk of Supreme Court
 - 2. Secretary of State or designee
 - 3. Attorney General or designee

- C. No date/time requirement in Kansas statutes for canvassing lawyer elections for Supreme Court Nominating Commission.
 - 1. Judicial District Nominating Commission elections currently must be canvassed within 10 days under K.S.A. 20-2904(c)(2).
 - 2. As a policy, we will apply the same canvassing requirements to the lawyer member elections for the Supreme Court nominating Commission.

VII. **"Within 14 days after the results of a selection are certified" (K.S.A. 20-122(c))**-- Clerk must create a list including:

- A. Position and year for which election was held.
- B. Name and residential address of all lawyers who returned a ballot with signed certificate.
- C. Transmit certified copy to Kansas Secretary of State who will append information to the roster for said election.
- D. Substantial increase in time because Clerk will have only 14 days to create a list of the name and residential address of all lawyers who returned a ballot with signed certificate.

VIII. **June 15, 2019** – (RUN-OFF ELECTION IF NECESSARY) Ballots mailed to lawyers on certified roster

IX. **July 1, 2019** – (RUN-OFF ELECTION IF NECESSARY) Ballots due in office of Clerk of the Appellate Courts

X. **JUDICIAL DISTRICT NOMINATING COMMISSIONS**

- A. Process essentially the same for election of lawyer members of the Judicial District Nominating Commissions. K.S.A. 20-2904 *et seq.*

- B. The difference for the Judicial District Nominating Commission lawyer member elections is that the Clerk will run the list of names for the certified roster on November 15th, and then corresponding dates from above start running for a certified roster due to the Kansas Secretary of State by December 1st of the election year.

C. In 2020, there will be elections for lawyer members in 17 judicial districts.

Thank you for the opportunity to explain the ramifications of the 2016 amendments for the lawyer member elections for the Supreme Court and Judicial District Nominating Commissions.



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Clerk of the Appellate Courts

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**FINANCIAL IMPACT TESTIMONY Presented to the
House Committee on Judiciary
By Douglas T. Shima, Clerk of the Appellate Courts
January 28, 2019
House Bill 2020**

***FINANCIAL IMPACT OF COMPLIANCE WITH 2016
LEGISLATIVE AMENDMENTS K.S.A. 2016 Supp. 20-170(b)***

COSTS FOR COMPLIANCE WITH 2016 LEGISLATION

I. Forms for compliance with the certified roster requirements of K.S.A. 2016 Supp. 7-127, mailed out July 28, 2016, in order to comply with the deadline of 30 days from enactment of statute on July 1, 2016.

A. Costs involved in mailing:

1. Centralized Mail	\$6,219.21 (Postage)
2. Centralized Mail	\$935.22 (Handling/Inserting)
3. Printing	\$1,805.66 (Letter/Form)
4. Printing	\$644.34 (Envelopes – Window)
5. Printing	\$477.32 (Envelopes – Return)
Total Costs	\$10,081.75

II. Pursuant to K.S.A. 20-170(b) attorneys were required to return the forms for compliance with the certified roster in 60 days from July 1, 2016, resulting in a deadline of August 30, 2016.

- A. Additional staff time and assistance of other offices in Judicial Branch for date stamping envelopes with received date of 10,000 returned compliance forms.
 - B. Additional staff time to answer or return over 100 phone calls and hundreds of emails concerning the requirements of the certified roster.
 - C. Additional staff time and assistance of other offices in Judicial Branch for removing 10,000 compliance forms from envelopes and date stamping form with received date.
 - D. Processing 3,000 emails with forms returned electronically. Printing form and date stamping form with received date.
- III. Cost of Updating Attorney Registration Database with information returned in mailing.
- A. Hiring of additional staff beginning October 2016
 - B. Cost of additional staff - \$14,094

ANTICIPATED COSTS ELIMINATED IF HB 2020 IS PASSED

- I. Time for Clerk of Appellate Courts canvassing election of the lawyer member of the Supreme Court Nominating Commission is reduced.
 - A. 1,383 total ballots will be mailed for 2019 Supreme Court Nominating Commission
 - B. On average, 153 ballots are tabulated by canvassers per hour.
 - C. Only 3 canvassers allowed pursuant to 2016 amendments in K.S.A. 20-130.
 - D. 1,383 potential total ballots for 2019 Supreme Court Nominating Commission lawyer member election tabulated at 153 ballots/hour
 - i. 9 hours to complete election
 - ii. 3 Canvassers: 3 hours for 3 canvassers to complete election
 - iii. Additional time required of Clerk of the Appellate Courts.
 - E. 3,624 potential total ballots for 2020 Judicial District Nominating Commission lawyer member elections tabulated at 153 ballots/hour
 - iv. 24 hours to complete election
 - v. 3 Canvassers: 8 hours for 3 canvassers to complete election
 - vi. Additional time required of Clerk of the Appellate Courts.

- II. Additional staff time in compiling certified list of the name and residential address of all lawyers who returned a ballot with signed certificate (K.S.A. 20-122(c)). List of 1,383 or 3,624 potential ballots must be processed in 14-day timeframe in order to create a list with name and residential address of voting attorneys.
- III. Annual registration forms in 2018 revised to track certified roster status. Separate compliance form enclosed in 2018 registration for attorneys to change certified roster status. See attached Forms.
- IV. Additional time required during annual registration of approximately 15,000 attorney registration forms to input and/or process any change in selection for certified roster status.
- V. **Anticipated Costs will be incurred in Spring 2019 if amendments do not become effective before May 1, 2019.** Costs will be incurred twice a year for every year thereafter for the Supreme Court Nominating Commission lawyer member election and the Judicial District Nominating Commission lawyer member elections. Costs will also be realized yearly during annual attorney registration.

Nominating Commission Eligibility

Judicial District and Supreme Court Elections

To vote, nominate, or be nominated in any nominating commission election or serve as a member on any nominating commission, you **must** be listed on the certified roster that is provided to the Secretary of the State.

1. Do you want to be included on the certified roster?

Yes No

2. If marked yes, you **must** provide the following information, which will be included on the roster along with your residential address.

[Mark one] Male Female Other

[Mark only **one** choice] Driver's license number _____
or Nondriver's identification card number _____
or Last four digits of Social Security number *(Already on file)*

The above information, along with your name, residential address, and date of birth, will be included on any roster compiled for nominating commission elections and will be provided to the Secretary of State's office under K.S.A. 20-170 and K.S.A. 20-2904. *Attorneys on active, inactive or retired status who reside in Kansas are eligible to nominate, be nominated, or vote in any nominating commission election or serve as a member on any nominating commission.*

Date

Signature of Attorney

Attorney Registration Number

Please note: If you do not return this form or if any of the required information is incomplete, the selection and information currently in the attorney registration database will be used to determine eligibility for placement on the certified roster. If your existing selection is marked "no," then your name will not be included on the certified roster and you will not be eligible to nominate, be nominated, or vote in any nominating commission election or serve as a member on any nominating commission until you change your selection and the required information is provided to the attorney registration office.



The Supreme Court of Kansas

Office of Attorney Registration

Douglas T. Shima, *Clerk*
Debbie Uhl
Attorney Registration Administrator

KANSAS JUDICIAL CENTER
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Telephone 785-296-8409
registration@kscourts.org

May 21, 2018

Notice of Nominating Commission Eligibility Selection

To participate in any nominating commission election or serve as a member on any nominating commission, you must be listed on the certified roster that is provided to the Secretary of State prior to each election.

Your current eligibility selection status is located at the bottom of your registration form. Only return the form on the reverse side of this page if you want to change your current eligibility selection for nominating commission elections.

If changing your selection to "yes," please provide the required information shown on the selection form. Return the form with your registration form in the enclosed self-addressed envelope to the Clerk of the Kansas Supreme Court.

If you have any questions, contact the Attorney Registration Administrator at: registration@kscourts.org.

A handwritten signature in cursive script that reads "Douglas T. Shima".

Douglas T. Shima, Clerk
Kansas Supreme Court